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Poullet, Yves

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Towards a social security identity card: lessons from the Belgian case¹

Y. Poullet

University of Namur, Namur, Belgium

Abstract: A '96 Royal decree introduces a computer readable social security smart card in the Belgian social security systems for various purposes including labour and tax control. Certain criticism has to be addressed to this important issue which might be extended to the processing of pure medical data.

1. The Belgian case: The '96 royal decree creating a social security card (S.S.C.)

A Royal decree dated from December 18th, '96 "taking measures in order to introduce a social security identity card"², provides that in the near future³ a unique social security card will be issued to each person insured under the statutory Belgian health insurance system, and later to the insured persons' dependants.

1.1 Content

This card will contain a variety of information. Some are eye-readable, like name of holder, sex; date of birth; social security identification number (S.S.I.N.)⁴; the starting and expiration dates of the insurance cover and insurance status. Others will be readable only through reading devices and will be encrypted in order to permit selective access.

It is worth noting that other data including medical data might be added after a decision, taken by Royal decree. If the main purpose of the card is at this stage an administrative one, it is broadly assumed that other purposes might be envisaged in the future.

1.2 Management

The Social Security Card will be issued free of charge⁵ through the different social security insurance institutions⁶. Renewal will take place each five years. With regard to issuing institutions, let us recall that the security systems in Belgium are broadly operated through private non profit organizations, which are ideologically or politically characterized so far that the citizen's adherence to these social security organizations is considered under the '92 Privacy Act as sensitive data⁷.

The Social Security Crossroad Bank⁸ plays an important role in the management of the system. This institution which is already in charge of the management of all data traffic between the Social Security Institutions, will determine the technical specifications of certain elements of the infrastructure needed for the running of the card, particularly:

- format of the chipcard;
- structure of the data recorded on the chip;
- encryption mechanisms;
- smart card readers...

This institution will manage a central data bank containing data about all cards delivered and will determine how the updating of this data through the different institutions will take place.

The use of the card is mandatory for different institutions acting within their direct relationships with those insured, not only the social security institutions but also all the entities (physical or legal persons) which have to declare social security data to these institutions in order to perform obligations derived from either the social security regulations or labour and fiscal regulations.

Furthermore, it is foreseen by the '96 Royal decree that by another Royal decree, it might be possible to impose to other institutions the use of the card for specific purposes.

The King is authorized by art. 4 to impose on other institutions the use of the card for specific purposes.

The King is also authorized by art 4 of the Royal decree to impose the possession of the card to certain people and to precise in which circumstances.

The holder will have to present his card to each public agent in charge of social security, labour and taxation control.

1.3 Finalities

The Social Security Card project is intended to pursue the following goals:

- serving as an individual document to prove membership for all Social Security Institutions (S.S.I.);
- facilitating citizen's access to the information held by the different S.S.I.;
- reducing the administrative charges for health care professionals, citizens and S.S.I. by reducing the circulation of papers and by ensuring to the different actors within the health care sector a direct access to the needed data mainly the administrative ones;
- supporting control over irregular situations and services management;
- improving the quality of data by avoiding errors due the manipulation of papers or delays in the transmission of information.

The project has multifunctional applications. So, for example, a worker will have the possibility to access the log of his working life in order to know his current status and when he will have gained the right to retire and how much money he will be paid. Through the combined introduction of the S.S. Identity card and the Health Professional Card, a hospital can control the insurance status of the cardholder, his right to obtain discounts when buying medicines or going to a hospital.

If the benefits of the project are undoubted, certain points have nevertheless been criticised mainly with regard to the privacy principles. The second part of this report will develop certain points of this debate.

2. The S.S.C. and the privacy principles

The decree has been adopted by the Council of Ministers without having been submitted previously to the Data Protection Commission. Nevertheless, after the decree's publication the Commission delivered an "advice" on its own initiative. The following remarks do take into account some of the remarks made by the Commission but they will have to enlarge the debate in order to be useful in the broader context of the Health Card. If our comments refer mainly to the E.U. directive provisions⁹ we will also take into account the final conclusions of the Eurocards Working Group 5 about "the Health Card and its acceptability"¹⁰.

2.1 The "legitimate purpose" principle

This principle is the cornerstone of the protection offered to the data subject by the directive: personal data may only be collected, stored and processed for legitimate purposes.

The legitimate grounds for which personal data can be processed are laid down in article 7 of the directive and in art. 8 more specifically for sensitive data including medical data.

2.1.1 A prejudicial question: sensitive or not sensitive data

With regard to the distinction between sensitive and not sensitive data, it is clear that its application to the information contained in the S.S.C. is not obvious. The notion of medical data has been defined as follows by the recent Council of Europe recommendations on protection of medical data: "personal data regarding the past or future physical or mental condition of an individual including any information linked clearly with the health situation of this individual". If it is clear, that pure administrative data as a social security identification number, a name, the existence of an insurance cover are not medical data, a lot of others, like e.g. the characteristics of an insurance cover, the identification number of the prescription needed for the reimbursement might reveal the physical conditions and can justify a more restrictive approach.

This ambiguity has not been solved till now and I think that it has to be solved rapidly in so far that the requirements for founding S.S.C. project might be different following the solution given.

In my opinion, many of the S.S.C. projects are covering the two kinds of data and have therefore to comply with the requirements provided by article 8 of the directive.

2.1.2 The legitimate grounds

With regard to a S.S.C. project. If we consider that it does not cover medical data, the legitimate ground might be found in art. 7 d) and e) personal data may be processed ... if the processing is necessary to comply with a legal obligation to which the controller is subject (art. 7 d) or if the processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed.

On the contrary, if certain medical data are processed by the S.S.C., other grounds have to be found:

1. the data subject's consent;
2. the medical or health related purposes pursued bound by persons by professional secrecy or an equivalent obligation;
3. the protection of the vital interests of the data subject (for emergency data).

Article 8.4. provides a supplementary exemption: Member States may "subject to the provisions of suitable safeguards for reasons of substantial public interests, lay down exemptions in addition to those laid down paragraph 2 either by national law or by decision of the supervisory authority.

In my opinion, article 8.4. has to be seen as the ground for funding ambitious S.S.C. project like the Belgian one insofar this project provides a circulation of medical data, or information about medical prescriptions, as for ensuring reimbursement of health care professionals or patients.

2.1.3 Consequences of this legitimate basis

Two requirements are expressly stipulated under art. 8.4.:

- first, a legislative provision or a decision by the supervising authority, i.e. the Data Protection Authority, is needed for such a project. It has to be underlined that in Belgium there was no legislative decision and the advice of the Data Protection authority has not been requested.

- second, the legal basis has to determine the "types of data which may be stored and the persons who may have access to the file" and to provide suitable safeguards against abuse and unauthorized access¹¹.

If criminal sanctions are foreseen under the Belgian decree for fraudulent or unauthorized use of the card or for such a modification of the data stored on the card, we have already stated that there are no clear specifications of the data stored on the card and for the people authorized to have access to the card. The technical measures for preventing unauthorized or fraudulent access have to be defined by the S.S. Crossroad Bank without possibility of direct control by the Data Protection authority.

Some commentators have, at this point, underlined that the considered decision to ensure traffic through the banking networks (Banksys and Isabel) will create a great extra risk.

2.2 The multiple finalities of the S.S.C.

If it is quite clear that a card may pursue various finalities, the directive requires clearly that each finality is sufficiently defined and legitimized and that subsequent uses of the card do not diverge from the purpose announced at the time of its inception.

These principles are expressed by art. 6.1. b of the Directive. They are obviously not respected by the Belgian decree insofar the S.S.C. will be used for different non coherent purposes as previously demonstrated: Social Security functions on one side; labour and fiscal control on the other (these last functions being vaguely defined).

Also, the King's decree authorizes the pursuit of new finalities which might be defined in future by the King.

The Belgian S.S.C. is allowed to pursue various finalities, but only for as long as each of these is sufficiently defined and legitimized and that subsequent uses of this card do not diverge from the purpose announced at the time of its inception.

As stated before on the conditions, the Belgian decree is questionable. First, certain of the S.S.C. functions are not precisely defined. What precisely are the labour or fiscal¹² control functions? Second, if it is foreseen that the contents of the card might be extended to pure medical data in order to serve medical functions (emergency or case history functions), these new functions are quite divergent from the administrative functions which are the only announced purposes of the card.

Finally, the multifunctionality of the card has one major consequence; following the pertinence principle, data relating to each of these finalities must be clearly distinguishable and access to it must be provided only to the entitled persons to access those data. If the card is multifunctional, must be required a definite classification of data and the creation of distinctive zones for reading and writing access¹³.

For this classification and this creation, the adequacy principle will apply. That means that only data strictly necessary for the performance-out of that task may be recorded or even processed. A Council of Europe Recommendation R86 must be recalled at this point: "Personal Data should not be transmitted outside the Social Security System and for other purposes than Social Security purposes except with the specific and informed consent of the data subject or in accordance with appropriate security measures specified by national law". (art. 3.3.).

The Judgement about the pertinence or relevance of information for the completion of a specific function is sometimes delicate. Therefore, in the context of the Eurocards W.G. 5 we recommend that "such an assessment should be the object of an informed decision taken on the basis of consultation with the interested parties..." the representatives of not only health care professionals or institutions but also of patients or in this case of all citizens.

We regret that nothing has been done in that sense in Belgium.

In addition, article 2 al. 9 of the King's decree provides that for the additional data that might be stored in future on the card, the King will determine the data files for which these data will be subtracted. These provisions are questionable for two reasons:

- first, it is not certain that the principle of the directive (art. 6b) under which personal data can only be used in a way compatible with the purposes of the data collection will be respected;
- second, this provision is in contradiction with art. 3 of the Council of Europe Recommendation R(86)1 which explicitly states: "the S.S. institutions should collect personal data directly from the data subject. Sensitive data might be collected from other sources only with the explicit and informed consent of the data subject or in accordance with other safeguards defined by national law".

2.3 The uses of the National Identification Number

The S.S.I.N. will be printed on the readable front of the S.S.C. It is to be underlined that in Belgium, the S.S.I.N. is the same as the fiscal identification number and the National identification number.

Therefore, it is quite obvious that a large number of people (pharmacists, employers, hospitals, ...) will have direct and easy access to this number¹⁴.

This number will have to be used by all these people in their relationship with the S.S. institutions. Its storage creates a high risk of multiple usage incompatible with the legitimate purposes and the interconnection between data files will be easier.

In my opinion, the Belgian provision does not respect the art. 8.5. of the Directive: "Member States shall determine the conditions under which a national identification number or other identifier of general application may be used". It is quite clear indeed that the European Directive requests the member states to take appropriate measures in order to prevent broad dissemination of national identifiers and easy connections between public and private data files. In this context, choosing a common identifier for the social security, fiscal and national register applications does represent a major risk¹⁵. The Council of Europe recommendations R (86), I have already quoted, stipulates: "the introduction or utilization of an unique and uniform S.S.I.N. ought to be accompanied by appropriate safeguards specified by national law"¹⁶.

3. Conclusions

Recently, the French Data Protection Commission (CNIL)¹⁷ has underlined the increasing risks due to developments of a health telematics network. "Provided that the development of these networks, due to the finalities pursued and to the methods of data collection, has major consequences on the fundamental principles which today govern the health care system in France, particularly the privacy and individual freedom principles, the professional secrecy and independence of health care professionals".

Some consequences of these increasing risks were outlined by the French Commission. They can be expressed by the following principles:

- the first one was the strict limitation of health care nominative data processing performed only for the direct interest of the patient and for public health care which are legally defined. This excludes any processing for commercial purposes.
- the second one was the absolute requirement before building of new information systems to set up a consultation procedure committing all interested parties including patients; health care professionals; trade unions; health establishments, health care administrations; privacy commissioners.

- the third one can be expressed as follows: informing users (patient, health care professionals, ...), at all levels, of the finalities and uses of the card is an essential obligation for the card's promoter¹⁸.
- the fourth one provides that the confidentiality and security of processing must be ensured by technical measures, contractual commitments and legal sanctions.

It is our hope that in the future, these principles will be respected when settling up European Social Security Smart Card systems.

¹ The opinions expressed by the author do not represent the Belgian Data Protection Commission views.

² This decree has been published in the Official Journal (*Moniteur Belge*) of Feb. 7, 97. It has been approved by the Council of Ministers in application of articles 38, 40, 41 and 49 of the 26th of July 96 Act on the modernization of the Social Security.

³ The project will be partly operational before the end of the year.

⁴ This number is the same as the national identification number.

⁵ It is foreseen that the costs of production and delivery of the cards (approximately 2 ECU's by card) will be in charge of the State.

⁶ The institutions have also to take in charge all the security measures in case of theft or loss of the cards.

⁷ Art. 6 of the 92' Belgian Privacy Act forbids the processing of such data except if permitted by an Act or by decree derived from an Act.

⁸ This institution has been created in 90 by a Specific Act (Act of Jan. 15, 90) on the settling up of a S.S. Crossroad Bank).

⁹ European Community directive on the protection individuals with regards to the processing of personal data and on the free movement of such data (adopted by Council on 24 July 95).

¹⁰ P.A. Comeau, Y. Pouillet (ed.), *The HealthCard and its acceptability*, Eurocards W.G. 5, Final Deliverable, Aug. 96, Aim DG XIII, "Eurocards" Concerted Action.

¹¹ The original proposal of the directive was still more explicit, requesting the specifications of the persons who may be controllers.

¹² The Council of State has underlined that the addition of the fiscal control function was illegal insofar the legal basis (art. 41 of the 26 July 96 Act) does not provide at all this function.

¹³ See in the same sense, the advice of the Belgian Privacy Commission about the King's decree which requests, as strict application of the finality principle, legal and technical measures ensuring that the access to the card content will be limited to the sole data needed.

¹⁴ This possibility is in contradiction with the legislation on the National Register (Act. of 8 August 83) which clearly grants the rights of access to the National Register of the National Identification Registration Number only to public institutions or institutions performing public tasks.

¹⁵ As the Belgian Privacy Commission has underlined at several times, see e.g. *Advices* 22/93 - Dec. 6 1993; 24/93 - Dec. 6, 1993.

¹⁶ The preamble (§ 34) is still more explicit: "One can dread that the introduction of a social security number permit to authorities performing their activities outside the S.S. sector to use this number to their own purposes. This number conceived originally for a peculiar purpose could become rapidly a standard number available for all purposes.

¹⁷ Deliberation n° 97008 (Feb. 4.97) carrying a motion about the processing of nominative Healthcare data (published in the Official Journal (April 12.97)). The context of the motion was the following: Some marketing associations working in the healthcare sectors were processing the medical prescriptions sent to Social security institutions, in order to have a better cognizance of the medical practice. Through a device implemented in the pharmacist's information system, this information was sent electronically to the marketing associations.

¹⁸ See recommendations 3 of the Eurocards WG 5, op.cit.: "In order to ensure a maximum degree of transparency, the card's users, whether patients or health-care professionals, must be informed of the finalities and principles of the card. This is all the more vital in view of the fact that card users will often have little or no understanding of the technology being used.

Patients should therefore be informed of the identity of the individual or legal entity responsible for processing (the person or body determining the finalities and processing methods to be used for the treatment of personal data), the persons or types of persons who will have access to that data (that is to say, the persons with a right to be informed of the information on the card), and the existence of the patient's own right of access to data concerning him or her and, as the situation demands, the right to have that data either removed or corrected.

This information should be provided already the opening stages of the project and its provision should continue unabated while the project unfolds. The informing of the person concerned is a condition of that person's consent. For this reason it must pre-empt the issuing of the card.

Any modification during the course of the project of the aims being pursued, insofar as such an alteration is not incompatible with the original goal, must involve once more informing the person concerned.